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ONE HUNDRED SEVENTH CONGRESS

# Congress of the United States

## House of Representatives

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INDEPENDENT

The Honorable Ann M. Veneman  
Secretary  
United States Department of Agriculture  
1400 Independence Avenue, SW  
Washington, DC 20250

Dear Secretary Veneman:

On October 28, I joined four of my colleagues in writing you to request detailed information about USDA's efforts to prevent the massive food-borne outbreak of listeriosis that earlier this year killed seven people, hospitalized dozens, and caused miscarriages and stillbirths. After this outbreak was linked to contaminated poultry produced by Wampler Foods Incorporated from its plant in Franconia, Pennsylvania, Wampler Foods recalled 27.4 million pounds of fresh and frozen ready-to-eat poultry products on October 13, the largest food recall in U.S. history.

Since writing you, my staff has been in contact with several individuals who worked inside Wampler's Franconia plant. I am writing to bring to your personal attention what I have learned from these individuals and other sources. They describe an appalling failure by USDA to protect the public from tainted poultry products produced by Wampler Foods. I am also writing to ask again for a response to our October 28 letter and to request additional information about USDA's actions.

USDA officials have defended the Department's efforts to oversee the Wampler plant and to prevent the *Listeria monocytogenes* outbreak. In fact, you stated on October 17 that USDA "immediately upon determining contamination, took quick action to begin a voluntary recall and suspension of production by the plant."<sup>1</sup>

The information that I have received paints a very different picture, however. Individuals working inside the Wampler plant have said that USDA's lead inspector knew for months before the outbreak about extensive *Listeria* contamination in the plant, that Wampler management

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<sup>1</sup>USDA, *USDA Provides Update on Listeria Recall* (Oct. 17, 2002) (online at <http://www.usda.gov/news/releases/2002/10/0445.htm>).

received inappropriate advance notice of federal *Listeria* tests that were supposed to be random, and that USDA ignored or minimized widespread sanitary problems at the Franconia facility. Taken together, these allegations portray an agency that abdicated its responsibility to protect public health.

One of the individuals who has been in contact with my staff is Vincent Erthal, who was a USDA inspector on the night shift at the plant from May 2000 to September 2002. Mr. Erthal contacted me through his legal representatives at the Government Accountability Project. He has worked in the field of food safety since 1982, inspecting approximately 150 plants for USDA. He has also received a dozen certificates of merit, excellence, and commendation for his work. During the time period involved, Mr. Erthal was the second most senior USDA official in the Wampler plant. The most senior USDA official was the inspector in charge, who was the liaison between inspectors and management and who reported directly to USDA food safety officials.

According to Mr. Erthal, the USDA inspector in charge knew that Wampler Foods had found *Listeria* in environmental samples as early as the spring of 2002 — at least four months before the recall of Wampler's product. Mr. Erthal says that notes of a meeting between the inspector in charge and plant managers during the spring of 2002 describe "exceedingly high *Listeria* results." Despite this knowledge, USDA did not take steps needed to minimize the risk of *Listeria* contamination in poultry produced by the plant. This account contradicts repeated statements by top Department officials denying any knowledge within USDA of Wampler Foods' positive *Listeria* test results prior to the outbreak investigation.

Moreover, Mr. Erthal indicated that the Department's own testing for *Listeria* at the Franconia plant was essentially rigged. According to Mr. Erthal, the company was given advance notice of the testing, allowing the plant to conduct special cleaning to assure negative results.

In addition, evidence from internal agency documents and several eyewitnesses, including Mr. Erthal and others, indicates that for many months USDA officials ignored "filthy" conditions at the Franconia plant. Mr. Erthal, for example, observed "[l]ive flies and cockroaches in processing departments . . . dead flies . . . on exposed product . . . [and] foreign matter on product." The dangerous practices of Wampler employees observed by these eyewitnesses included several that obviously presented a direct risk of *Listeria* contamination. These practices included:

- Picking up ready-to-eat products from the floor and placing them on the production line without washing;
- Retrieving poultry products that fell into an "inedible barrel" described by one eyewitness as a "*Listeria* soup" and putting the meat back into production;

- Preparing raw turkey wings in the same room and at the same time as ready-to-eat chicken salad; and
- Allowing unsanitary liquid to drip onto meat products before packaging.

These repeated sanitary violations led Mr. Erthal, the USDA inspector, to recommend in the fall of 2001 — over 10 months before the recall — that serious enforcement action be taken against the plant, yet this request was stymied by your Department.

If what I have been told is true, the USDA actions at Wampler Foods, as recounted by one of USDA's own inspectors and others, are a compelling indictment of the nation's food safety system. The public deserves an uncensored accounting and explanation of USDA's actions. It is also absolutely necessary that USDA adopt long-needed reforms and demonstrate a commitment to enforcing the law.

#### **USDA Knowledge of Positive *Listeria* Tests at Wampler Foods**

After Wampler Foods issued its massive recall on October 13, USDA revealed that routine environmental sampling conducted by Wampler Foods had found *Listeria* on multiple occasions in 2002, including some during the period of the outbreak. Because this testing was not part of the company's formal safety plan, however, Wampler Foods was under no obligation to report the results to USDA.

USDA has thus far denied hearing about positive *Listeria* results in time to have taken action to improve the conditions at the Franconia plant. At an October 17 briefing for congressional staff, USDA officials said the agency first heard of the results on September 30, after public health officials had traced the outbreak to the plant through its epidemiological investigation. On November 18, the Associated Press, citing Undersecretary for Food Safety Dr. Elsa Murano, reported that "Wampler Foods did not share the results of its environmental tests with inspectors." Dr. Murano is quoted as saying: "One can never be sure, but it certainly would have helped us [to] have that information and be able to perhaps ascertain that maybe there's a potential problem there."<sup>2</sup>

In direct contrast to USDA's statements, however, Wampler Foods has insisted that it "routinely made available to USDA plant inspectors all positive test results from Wampler's voluntary environmental testing."<sup>3</sup> The information I have received supports Wampler's account.

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<sup>2</sup>*Government Pressures Meat Processors to Test Equipment for Listeria, Report Results*, Associated Press (Nov. 18, 2002).

<sup>3</sup>Wampler Foods, *Wampler Update on Status of Recall* (Oct. 29, 2002) (online at [http://headlines.net/wamplerfoods/08\\_update.html](http://headlines.net/wamplerfoods/08_update.html)).

First, eyewitnesses confirm that Wampler took multiple environmental samples from 2000 to 2002. One person who was regularly in the plant has told me that Wampler Foods conducted *Listeria* testing twice a day. Another eyewitness said that a large number of these tests came back positive for *Listeria* during the past few years.

Second, Mr. Erthal says that the lead USDA inspector at the plant knew that Wampler had found positive *Listeria* results. In USDA's files Mr. Erthal saw the minutes of one of a series of regular weekly meetings between the USDA inspector in charge and plant management that occurred in the spring of 2002. These minutes refer explicitly to the company's *Listeria* testing. Mr. Erthal recalled that the minutes included a note to the effect that Wampler found "exceedingly high *Listeria* results that might become a concern of the USDA." However, according to Mr. Erthal, USDA did not use the results to require additional product testing or take other important sanitary measures.

This is an extremely serious allegation. If true, it means that USDA had knowledge of extensive *Listeria* contamination at the plant months before the massive recall. Yet during this period, USDA did not move aggressively to prevent the outbreak of *Listeria* contamination that killed seven, hospitalized dozens, and caused miscarriages and stillbirths.

I therefore request a full explanation of USDA's handling of these *Listeria* results, together with copies of all minutes of meetings, notes, documents, memos, e-mails, and other communications in USDA's possession relating to these positive test results from January 2001 to the present. I also request that USDA employees who attended the weekly meetings with plant management be made available to my Government Reform Committee staff for interviews.

#### **USDA Warnings to Wampler Foods about Upcoming USDA Sampling**

Prior to the recall, while Wampler Foods was finding *Listeria* in its own testing of the Franconia plant, USDA tested several product samples but did not find any *Listeria*.<sup>4</sup> Based on these results, Dr. Murano of USDA stated that "[t]esting failed to prevent the outbreak of listeriosis in the Northeastern United States, and it failed to catch the contaminated product linked to the outbreak until after an exhaustive investigation."<sup>5</sup> She added: "My view is that we cannot test our way out of this problem. In fact, we cannot test enough product or plant environments to find all the *Listeria monocytogenes* that is out there threatening food safety."<sup>6</sup>

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<sup>4</sup>*USDA Defends Itself Against Listeria Lashing*, Food Chemical News (Oct. 21, 2002).

<sup>5</sup>*Listeria Tests Not Adequate, U.S. Says*, Philadelphia Inquirer (Nov. 7, 2002).

<sup>6</sup>*Id.*

I have been informed, however, that the Department's testing was basically rigged. According to Mr. Erthal, the lead USDA inspector in the plant gave Wampler Foods one- to two-weeks' advance notice of the testing and allowed the plant to employ special sanitation procedures prior to testing. These actions, if true, undermine USDA policy. According to USDA directives, *Listeria* sampling is supposed to be essentially random, with plants receiving only the limited notice necessary for the plant to hold the product represented by the sample.<sup>7</sup> According to two individuals with knowledge of the Wampler production line, this time frame at the Franconia plant should be less than one day.

Mr. Erthal informed my staff that after receiving advance word that a sample was going to be taken, "the plant would perform a special cleanup," including a "complete cleanup of overhead structures, ceiling, and walls," which "were not part of the normal clean-up process." On several occasions, according to the USDA inspector, the Franconia facility shut down production early to give the crew extra time to clean in advance of a USDA sample.

To the extent that USDA employees provided advance notice of the random samples to Wampler Foods, it would have made it nearly impossible for the Department to detect *Listeria* contamination. According to Mr. Erthal, this special favor for Wampler Foods "masks problems and allows the company to keep marketing product that could be contaminated with *Listeria*." As a policy matter, it is obviously wrong to conclude that testing did not work if USDA's approach to testing the Franconia plant was so seriously flawed.

I request a full explanation of USDA's actions regarding product testing and copies of all documents in USDA's possession related to product testing at the Franconia plant since January 2001. I also request that all USDA employees who were involved in the random testing program at the Franconia plant in 2002 be made available to my Government Reform Committee staff for its ongoing investigation.

#### **USDA's Lack of Response to Its Own Inspector's Request for Enforcement Action Against Wampler Foods**

At an October 17 briefing for congressional staff on the *Listeria* outbreak investigation, USDA first revealed that there had been unspecified sanitary problems at the Franconia plant in 2002. On October 28, I and four of my colleagues wrote you to ask for more details of these

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<sup>7</sup>FSIS, *Microbial Sampling of Ready-to-Eat (RTE) Products*, FSIS Directive 10,240.2, Revision 1, Amend. 1, § VII(C) (Jan. 24, 2001); FSIS, *Microbial Sampling of Ready-to-Eat (RTE) Products for the FSIS Verification Testing Program*, FSIS Directive 10,240.3, Part 3, § II(C) (Dec. 9, 2002).

problems.<sup>8</sup> We have yet to receive a response to that letter. My staff, however, has obtained USDA inspection documents from the Government Accountability Project. These documents reveal a pattern of multiple, serious sanitary violations at the plant. The violations described in these documents include a “[l]ive cockroach . . . running on the floor of the Men’s locker room,” “overhead conduit pipes with brown residue on them,” and “[w]ater from a hose contact[ing] product while employee washed boots.”<sup>9</sup>

Eyewitness accounts of the Franconia plant are consistent with these written reports. One individual with decades of experience in the food industry who has visited hundreds of plants said the facility was among the top 15 most “filthy” plants he had seen. Mr. Erthal, the USDA inspector, called the conditions “horrendous” and said they included: “Live flies and cockroaches in processing departments during operations, dead flies observed on exposed product, repeated condensation dripping on product, foreign matter on product, dried meat particles from previous days’ operation, moldy caulking throughout the establishment, algae growth on walls and ceilings, rusty equipment, and foreign matter in raw materials.”

I have learned that at least three specific sanitary violations at the Franconia plant should have rung alarm bells for possible *Listeria* contamination months before the outbreak.

First, I have been informed that the plant did not maintain adequate separation between raw poultry meat, potentially contaminated with *Listeria*, and “ready-to-eat” or “RTE” food that had already passed through the “kill step” for pathogens. Mr. Erthal gave the following example:

At Wampler, they occasionally made RTE chicken salad in the same department where they processed raw turkey wings. One employee was shoveling raw product into the oven and only ten feet away others were making the chicken salad. . . . There was no handwashing sink in the raw product area and therefore that employee would share the same handwashing sink with the employees who handled RTE product. Employees from the two different areas would also co-mingle during breaks increasing the potential of cross-contamination.

According to Mr. Erthal, plant managers and USDA officials with responsibility for the facility were aware of this practice and did nothing more than put up an ineffective plastic curtain between the two activities.

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<sup>8</sup>Letter from Reps. Henry A. Waxman, Marcy Kaptur, Rosa L. DeLauro, Nita M. Lowey, and Maurice D. Hinchey to USDA Secretary Ann M. Veneman (Oct. 28, 2002).

<sup>9</sup>USDA, *Establishment 07827 M - 01351 P NRs* (2002).

Second, I have learned that plant employees frequently placed dirty food products that could have been contaminated with *Listeria* on the “ready-to-eat” production line to be sent for shipping. One eyewitness observed employees picking up poultry products off the floor in a part of the plant where the floor drain frequently backed up, and putting them back on the production line without washing. This practice is not only unsanitary, but also poses a high risk of contamination with *Listeria*, a hardy bacteria that thrives in moist places. Another eyewitness described observing employees take meat that had inadvertently fallen into an “inedible barrel” and putting it back into production. This observer, who has extensive experience in the food industry, explained that the “inedible barrel” is a wastebasket for contaminated meat and described its contents as “*Listeria* soup.”

In yet another common situation, Mr. Erthal, the USDA inspector, reported seeing “fully-cooked franks being dragged on the floor prior to peeling and packaging.” The inspector explained that the “bacteria from the floor could contaminate the outer peels and this in turn could contaminate the product while the franks were being peeled.”

Third, the plant had an ongoing problem with liquid condensation above areas where ready-to-eat poultry products were being handled. Mr. Erthal said that this liquid, which could contain *Listeria*, dripped right onto the poultry meat prior to packaging. Mr. Erthal said that in one instance, the plant assigned a worker to remove condensation who was so visually impaired that he could not see it. According to Mr. Erthal, USDA did not take aggressive action to stop these condensation problems.

I have learned that to address serious sanitary deficiencies, including those that clearly risked *Listeria* contamination, Mr. Erthal discussed sending Wampler Foods a Notice of Intended Enforcement (NOIE) with his supervisor. This discussion first occurred in the fall of 2001. A NOIE is one of the most serious enforcement measures USDA can take. According to Department rules, such a notice will be issued when “the establishment has experienced multiple, recurring noncompliances, or for other reasons . . . the establishment has failed to implement adequate corrective and preventive measures.”<sup>10</sup> The notice will inform the plant that USDA intends to withhold the marks of inspection or suspend the assignment of inspectors and provides three business days for a plant to contest the basis for the proposed action or to demonstrate how compliance has been or will be achieved.<sup>11</sup> Withholding the marks of inspection and suspension of inspection will both result in a shutdown of all or part of a plant.<sup>12</sup>

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<sup>10</sup>USDA, FSIS, *Quarterly Enforcement Report: October 1, 2001 through December 31, 2001*, 12–13 (online at <http://www.fsis.usda.gov/oa/haccp/QUER1FY2002r.pdf>).

<sup>11</sup>*Id.* at 13.

<sup>12</sup>*Id.* at 12.

Mr. Erthal, however, was stymied by other USDA officials from formally submitting the NOIE in 2001. Finally, he did request a NOIE in August 2002. This request for a NOIE was accompanied by documentation of two years of sanitation failures by Wampler Foods, including many violations that were linked to earlier similar violations. Yet at the time of the outbreak investigation in October, USDA had not acted on the request.

Such repeated sanitation violations at the Wampler Foods plant are appalling, and USDA's failure to respond to clear evidence of practices that risk *Listeria* contamination is incomprehensible. I again request all information about sanitation violations found at the Franconia plant since January 2001; detailed information regarding any requests for a NOIE, including any communications between USDA and Wampler Foods or within USDA regarding such a request; and copies of any correspondence, e-mails, other communications, and notes of conversations related to food safety at the Wampler Foods facility. I also request that all USDA inspectors at the Franconia plant in 2002 be made available for interviews by my Government Reform Committee staff as part of its ongoing investigation.

### **Conclusion**

If what I have been told by USDA Inspector Vincent Erthal and others who worked inside the Wampler plant is accurate, USDA failed at a crucial time to protect American consumers. These failures can be seen, in part, as failures of USDA's implementation of the Hazard Analysis and Critical Control Point (HACCP) system. Under this system, USDA's primary role is to oversee the plant's food safety plan and procedures. According to the General Accounting Office and others, this system has had the effect of relaxing some safety standards due to poor training and limitations on actions that USDA inspectors can take.<sup>13</sup> In recent weeks, USDA has announced a new directive on *Listeria* testing and promised eventually to issue the long-delayed *Listeria* rule. However, the lesson of the Franconia plant's experience is that additional rules, while important, will still not be enough absent a USDA commitment to effective implementation of the HACCP system so that it truly protects the American public.

My understanding is that Mr. Erthal has already been in contact with the USDA Inspector General about what he observed, and that the Inspector General is now conducting its own investigation. I urge you not to interfere in the Inspector General's investigation and to give the Inspector General your full support. Moreover, I remind you that it would be improper to take any retaliatory action against Mr. Erthal for contacting the Inspector General or Congress about

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<sup>13</sup>General Accounting Office, *Meat and Poultry: Better USDA Oversight and Enforcement of Safety Rules Needed to Reduce Risk of Foodborne Illnesses* (Aug. 30, 2002); Felicia Nestor, Government Accountability Project, and Wenonah Hauter, Public Citizen, *The Jungle 2000: Is America's Meat Fit to Eat?* (September 2000).



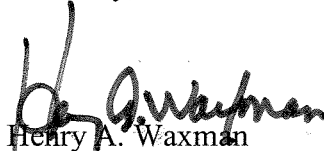
The Honorable Ann M. Veneman  
December 11, 2002  
Page 9

his concerns. Under § 2302(b) of title 5 of the United States Code, federal employees are protected from discharge or other discriminatory actions by employers in retaliation for providing information about mismanagement, waste of funds, and safety and health hazards in the workplace and the environment.

As a critical link in our nation's food safety system, USDA must vigorously protect Americans from the dangers of *Listeria* contamination and never overlook sanitary violations, bias random testing in favor of not finding a problem, or ignore evidence of contamination. As the tragic *Listeria* outbreak has made all too clear, lives of Americans are at stake.

Thank you for your prompt attention to this matter. I request a reply by January 6, 2003.

Sincerely,

A handwritten signature in black ink, appearing to read "Henry A. Waxman". The signature is stylized with a large initial "H" and a cursive "A. Waxman".

Henry A. Waxman  
Ranking Minority Member